



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2022-0175; FRL-9570-01-OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Sierra Club et al. v. Regan*, No. 21-cv-6956 (N.D. Cal., September 8, 2021). On September 8, 2021, Plaintiffs Sierra Club, Environmental Integrity Project, and Natural Resources Defense Council (collectively, Plaintiffs) filed a complaint in the United States District Court for the Northern District of California, Oakland Division. Plaintiffs alleged that the Environmental Protection Agency (EPA or the Agency) failed to undertake certain non-discretionary duties in accordance with the Act to timely respond to numerous state implementation plan submissions and to issue findings of failure to submit to numerous other states who had failed to respond to an EPA finding that their state plans were substantially inadequate under the Act. The proposed consent decree would establish deadlines for EPA to act on certain submissions and establish that certain claims in the Complaint are now moot.

DATES: Written comments on the proposed consent decree must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0175, online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Additional Information about Commenting on

the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand-deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

FOR FURTHER INFORMATION CONTACT: Seth Buchsbaum, Air and Radiation Law Office (mail code), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone (202) 564-2484; email address buchsbaum.seth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2022-0175) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

II. Additional Information about the Proposed Consent Decree

On June 15, 2015, EPA issued findings of substantial inadequacy pursuant to CAA section 110(k)(5) for SIP provisions applying to excess emissions during startup, shutdown, and malfunction (“SSM”) periods for 45 states and air districts. State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 80 FR 33840 (June 12, 2015). EPA accordingly issued a SIP Call requiring those 45 states and air districts to submit plan revisions to correct SSM-related deficiencies in their SIPs within 18 months, i.e., by November 22, 2016 (2015 SSM SIP Call).

The proposed consent decree would establish deadlines for EPA to take action pursuant to CAA section 110(k) on certain SIP revisions that were submitted by the following states and air districts in response to the 2015 SSM SIP Call: Alaska, Arizona – Arizona Department of Environmental Quality, Arizona – Maricopa County Air Quality Department, California – Eastern Kern Air Pollution Control District, California – Imperial County Air Pollution Control District, Colorado, Delaware, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, New Jersey, New Mexico, North Dakota, New Mexico – Albuquerque-Bernalillo County, Oklahoma, South Carolina, Tennessee, Virginia, Washington, and West Virginia. Plaintiffs also alleged that EPA had failed to take action on SIP revisions submitted by Texas and North Carolina in response to the SIP call; however, EPA has withdrawn the SIP Calls submitted to those states, mooted that portion of the litigation. SIP Call Withdrawal and Air Plan Approval; NC: Large Internal Combustion Engines NO_x Rule Changes, 85 FR 23700 (April 28, 2020); Withdrawal of Finding of Substantial Inadequacy of Implementation Plan and of Call for Texas State Implementation Plan Revision-Affirmative Defense Provisions, 85 FR 7232 (February 7, 2020; effective March 9, 2020).

CAA section 110(k) sets forth the process by which EPA reviews SIP submissions and revisions. 42 U.S.C. 7410(k). According to that process, EPA must determine no later than 6 months after the date by which a state is required to submit a SIP submittal whether a state has made a submission that meets the minimum completeness criteria. *Id.* 7410(k)(1)(B). EPA refers to the determination that a state has not submitted a requisite SIP submittal as a “finding of failure to submit.” Plaintiffs alleged in the complaint that EPA failed to make findings of failure to submit SIP revisions that remove or amend the SIP-called provisions pursuant to CAA section 110(k)(1)(B), 42 U.S.C. 7410(k)(1)(B), for twelve additional states and air districts. However, on January 12, 2022, EPA published findings of failure to submit in the *Federal Register* for those twelve states and air districts, mooted that portion of the litigation. Findings of Failure to Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls to Amend Provisions Applying Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 87 FR 1680 (January 12, 2022).

Additionally, during the pendency of this litigation, in the ordinary course of its administrative action, EPA has taken final action on some of the SIP submissions originally at issue in the litigation.¹

Under the terms of the proposed consent decree, EPA shall sign a notice or notices approving, disapproving, conditionally approving, or approving in part and conditionally approving or disapproving in part the SIP revisions as listed and identified in the proposed consent decree by the established deadlines. The proposed consent decree provides that if any State withdraws one of the listed SIP revisions, EPA’s obligation to take such an action is terminated.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the

¹ See 87 FR 7725 (February 10, 2022); 87 FR 8952 (February 17, 2022); 87 FR 14802 (March 16, 2022).

proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information about Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0175, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information

provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Gautam Srinivasan,
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